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Ethics

By HUBERT T. MORROW *of the Los Angeles Bar*
Vice President, Los Angeles Bar Association

Ethics has been variously defined, but perhaps the definition, "Ethics is the science of ideal conduct," is as comprehensive as one will find.

As applied to the practice of any profession or business there must necessarily be some specific rules of conduct which practically direct the professional or business man in the problems peculiar to his vocation. In the law these rules are known as Canons of Ethics.

Except in instances where the rule or canon is necessarily arbitrary or based on acquired experience, as distinguished from theoretical considerations of the pure right or wrong of a situation, the Canons of Ethics but state with some particularity the conclusions of every right thinking and properly trained man. No lawyer should need to be told that he cannot represent two opposing clients against one another, or in other words represent conflicting interests, but many of us do not know at times just what constitutes a conflict of interests. There the Canons of Ethics are of great aid in clarifying our minds and pointing the true decisions of the problem. There also will be found discussed many other practical questions which daily confront the active practitioner. Such rules represent not only the conclusions of great minds after careful study and preparation, but present in short space the accumulated wisdom of the ages applied to actual situations arising daily in the practice of our profession and suggesting the right and practical conduct of its members in their relation to the public and to one another.

In this particular day, it would be well for the Bar to give pause and consider carefully the trend of our profession toward commercialism. The conduct of the profession as a whole is on a very high plane, but that of some men has been such as to cast reflection on the Bar. Greed is the cause of most of the violations. It is the noted exception for a lawyer to prove disloyal to his client, but there are far too many instances where lawyers overstep the bounds to do some act for and at the request of his client and in furtherance of the latter's interests. In other words, the very rule which requires loyalty of the lawyer to his client and compels him to protect the client's interests at all hazards to himself, at times is a factor in leading the lawyer into violation of the equal duty which he owes to the public generally and to himself. Here is where a study of the Canons will tend to balance the judgment of the lawyer and cause him to better appreciate the limits of his respective obligations.

The duty of a lawyer to observe the rights of others as well as his client's, was expressed by our old friend, Sir William Blackstone, in poetic vein when he wrote:

"Virtue and her friends a friend,
Still may my voice the weak defend;
Ne'er may my prostituted tongue
Protect the oppressor in his wrong;
Nor wrest the spirit of the laws,
To sanctify the villain's cause."

We shall always have with us the lawyer who is practicing merely for money, and who has not gained either by breeding, learning or experience that understanding of life that at least makes him desire to do the right thing. We have with us the obtuse man, who is necessarily ignorant not only of the ordinary technique of his work, but of his duty to his client, to fellow lawyers, and to the public. He is simply ignorant, and the gateway to practice should never have been opened to him. We have in our midst also the crafty lawyer, too often well versed in ways that are cunning, and wholly dishonest and unscrupulous. It is true that he represents but a small part of

one per cent of the profession, but his actions are largely responsible for such criticism of the Bar as exists. Some of the more refined operators of this type are peculiarly loyal to their clients—probably only because a reputation in that regard is a necessity to their so-called success.

Ethical considerations are not for this latter class of members of our profession—quite generally known as "Shysters." It is only a matter of time, with the work that has been and is being done within the Bar itself through the Bar Associations, until the known dishonest lawyer will be caught, or, growing prosperous and wary, will reform as a matter of necessity. We have a few examples of such reformation and many proofs of the efficacy of vigorous disbarment proceedings. Unfortunately it is that type of lawyer that by various means forces himself into public notice, and to at least a part of the public he stands as the representative of our great profession. The newspapers are partly to blame for giving publicity to such buzzards, and we may hope for the day to come when there will be a better understanding of that problem by the newspapers and the Bar.

That the Canons of Ethics are most reasonable and their observance of advantage is proven by the fact that the lawyers we most admire and respect, who have gone furthest in their profession, and who stand highest in the worth-while public esteem, are men who in their practice have a code of conduct and of honor which is based upon observance of the ideals stated in the Canons of Ethics. Some of those ideals cannot be practically applied by those of us of lesser learning, refinement and understanding, and it is not to be expected that all the ideals of conduct can be enforced upon the whole of any cross section of weak humanity.

Laymen who have laughed at Ethics as applied to the practice of law and have misjudged the Bar as a whole have judged from some unhappy personal experience, or have given insufficient consideration to the facts and have permitted newspaper accounts of the actions of a few lawyers to mislead them. Rules of conduct are necessary in every phase of life, whether it be the rule of traffic, chess, business or profession, and in later years such necessity has been recognized by that now near-profession, the realtor, and by other lines of endeavor where public or private conscience developing with civilization points the necessity not only of fair dealing, but of definite statement and application of rules which will assure it.

The philosophers for ages have studied and discussed conduct in all its phases and the controversy will continue to the end of time. Few lawyers have the time or inclination to study the subject from such a standpoint. No one who has a modicum of sense will doubt for a moment that the simple rules of conduct laid down in our Canons of Ethics are practical, simple, tried guides to the reasonable, successful and honorable practice of our profession.

The writer realizes from his own past and present shortcomings and mistakes the inability of any ordinary lawyer to live up at all times to every requirement of proper practice. Most of us at times, under stress or through ignorance, do things we should not do, but, as life goes, they are small infractions, and if we have the right spirit we shall try to grow above such mistakes.

Many of our Canons have been bodily copied by the medical profession, and I have no doubt that if the Garbage Collectors' Association or any other brotherly organization were adopting rules of conduct for their members they would be compelled to adopt rules very similar to some of our general ones, because our Canons in large part but restate those rules of conduct that at all times and in all relations must govern the dealings of one with another in his same line of endeavor and with the public.

To the younger men who have not suffered the hard knocks and surprises of experience, I strongly suggest they read and reread the Canons of Ethics. The temptations of practice are great and the writer too well appre-

ciates that as a lawyer gets older and has an assured income it is much easier to preach ethics than when he was uncertain if and when he was going to eat. Benjamin Franklin in that connection truly said: "It is hard for an empty sack to stand up straight," and the older men, recalling their own difficulties and mistakes, have every consideration for the youngster who, under the strain of making a bare living and without sufficient experience falls into error which he regrets. Every young practitioner should know that he is at liberty to go to any of the leaders of his profession at any time for advice in any situation where he feels he needs guidance as to his conduct, and that advice will be freely given. Better still, he may at all times consult the Committee of the Bar Association on Legal Ethics where experienced members will help him in any such problem.

I dare say a half of the Bar has never read the Canons, and those who in that connection practice successfully by ear cannot but be helped; and those who have not recently read them will be refreshed.

How many men know that therein is contained a comprehensive discussion of the manner of arriving at proper attorney's fees? There are many other interesting features incorporated in the Canons.

In some hearings which it has been the writer's fortune or misfortune to have to attend, I have noted with amazement that some lawyers, charged with more or less improper conduct, have admitted that they not only have not read the Canons of Ethics, but that they never heard of them. One man of fair standing and ability contended, against a half dozen unprejudiced senior lawyers, that his actions had been perfectly proper, whereas his acts not only violated all ethics but in fact constituted moral turpitude. After the lapse of some days, prayer, and study by him of the Canons which were novel to him, he reluctantly admitted he was wrong. That man was a church-going fellow, but so obtuse that he

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Federal Regulation of Flying

By THOMAS HART KENNEDY
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Prior to 1926 there was no federal law regulating the operation of aircraft.[1] *Air Commerce Regulations*, issued by the Department of Commerce (Washington), December 31, 1926, combines in one booklet the important provisions of the Air Commerce Act of 1926[2] and the regulations issued thereunder.

The licensing of air craft is the heading of the first chapter. A certificate of airworthiness is required of certain craft and the grades of certificates differ as to the employment of craft. In a word, if the aircraft is to be used in interstate or foreign commerce it must be registered. In order to qualify for registration a test must be passed, given as prescribed by a Department of Commerce official. Seventeen pages of the booklet are devoted to the methods of determining the airworthiness of aircraft. For example, a classification table is shown on page five of the regulations. By the classification there indicated airplanes are divided into five classes according to weight. Another table limits the aerodynamic qualities of each of these five classes of planes. The licensing of airships and balloons is also provided for in this first chapter.

Aircraft to be registered must be marked in accordance with the Department of Commerce rules. It is provided in the second chapter of the regulations that the license numbers issued to worthy craft shall be painted on the sides of the rudder of the airplanes and on the upper and lower wing surfaces.

Operational control over registered craft is effected by requirements of log and compass records and checkings, flight testing of planes equipped with new engines, and special requirements for pilots carrying passengers at night. The laws of the United States regarding the entrance and clearance of vessels at sea, engaged in foreign commerce are made a part of the regulations of foreign commerce by air.

Chapter four takes care of the licensing of pilots and mechanics. "The term 'airman' means any individual who engages in the navigation of aircraft while under way, . . . (or) who is in charge of inspection, repair, etc."[3] Whether or not the act can constitutionally apply to all "airmen" engaged in intrastate flying is subject to dispute. The new regulations, however, apply the force of the law only to "airmen" working in connection with registered craft. Pilots' ratings are divided into:

"A" Private; "B" Industrial, and "C" Transport.

The examinations for the different classes are suited to the responsibilities of the different grades. The applicant for Transport Pilot's license will find his certificate most difficult to obtain, for on his skill will depend

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[1]Since 1919 the Air Mail Service has been operated under the Post Office Department, with Federal authority, and on February 2, 1925, the Contract Air Mail Act was approved, whereby the Postmaster General was authorized to let contracts for the carriage of mails (43 Stat. 805). Aside from this, no Federal laws existed prior to 1926 respecting non-military aviation. For a concise history of attempts at air legislation see: Joint Committee on Civil Aviation of U. S. Dept. of Commerce, and American Engineering Council, *Civil Aviation (a report)*, (New York, McGraw-Hill Book Co., Inc.), 1926, Ch. IX, "Air Legislation in U. S."

[2]See: "Air Commerce Act of 1926," F. P. Lee, Amer. Bar. Assn. Journal, June, 1926. The latest available reference to the law itself is: Public No. 254, 69th Cong., Appd. May 20, 1926.

[3]Air Commerce Act, 1926, Sec. 9; Air Commerce Regulations, Sec. 59.

*EDITOR'S NOTE: Mr. Kennedy's published works include: *The Economics of Air Transportation, an Introduction to* (New York, The Macmillan Co.,) 1924.

The Newspaper and the Law of Contempt*

By LEON R. YANKWICH *of the Los Angeles Bar*

Professor of Law, Loyola College, and Author of
CALIFORNIA PLEADING AND PROCEDURE

(Reprinted from the Los Angeles Daily Journal, January 21, 1927)

I
FREEDOM OF THE PRESS

There is a good deal of loose talk these days about "liberty" as contrasted with "license."

Every one seems intent on telling us that freedom does *not* mean license.

Few, however, stop to inquire and define where freedom ends and license begins.

Most of those who talk on the subject, if they were frank, would have to admit that to them "license" means not a well-defined concept,—the boundaries of which can be strictly delimited,—but what to them for the time being, is objectionable.

This loose conception is not confined to low places.

Nor is it confined to the present day.

Lord Kenyon, during the French Revolution, announced in dithyrambic tones:

> "The liberty of the press is dear to England. The licentiousness of the press is odious to England. The liberty of it can never be so well protected as by beating down the licentiousness."

This,—notes Professor Chaffee,—exasperated Sir James Stephens, the great historian of English criminal law,—into the comment, "Hobbes is nearly the only writer who seems to me capable of using the word 'liberty' without talking nonsense."

Those who have studied the problem from a legal and historical angle, are agreed that, so far,—at least,—as England is concerned, the liberty of the press consists in printing without any *previous* license, subject to the consequences of the law.

Ultimately, therefore, it is,—as Dicey has pointed out,—"little else than the right to write or say anything which a jury of twelve shopkeepers, think it expedient should be said or written."

"Such liberty," Dicey continues, "may vary at different times and seasons from unrestricted license to very severe restraint, and the experience of English history during the last two centuries shows that under the law of libel the amount of latitude conceded to the expression of opinion has, in fact, differed greatly according to the conditions of popular sentiment."

The special immunity which the constitutions of some continental countries grant to publishers and editors of newspapers is unknown to English law and "is quite inconsistent with the general theory of English law. It is hardly an exaggeration to say, from this point of view, that liberty of the press is not recognized in England." (Dicey).

If the constitutional inhibitions against abridgement of the freedom of the press, contained in American constitutions, are considered historically, it is evident that they mean more than immunity from restraint previous to publication.

They are a positive injunction against curtailment and impairment of the right of ex-

*EDITOR'S NOTE: In the following timely address delivered before the Southern California Editorial Association at its annual meeting in Los Angeles on January 21, 1927, Leon R. Yankwich of the Los Angeles Bar discussed the right of the press to comment upon the acts of the courts and the cases pending before them, both in the light of the statutes enacted by legislatures and in the decisions handed down by the courts themselves on the law of contempt.

Mr. Yankwich also discussed the limitations upon the power of the courts to punish for constructive contempt, imposed by the courts themselves and by the legislatures.

pression after it is made. *(Harlan, J.* in Patterson v. Colorado 205 U. S. 459; *Holmes, J.* in Schenck v. U. S. 249 U. S. 47.)

They forbid the intrusion of the law into the realm of opinion.

They forbid the punishment of words as acts, unless the words amount to *direct, not consequential,* incitment to act.

They allow the utmost freedom of comment on public men and matters of public interest.

But even if we leave aside the restriction imposed upon the freedom of the press during the war period, and some of the excrescences of that period, such as the criminal syndicalism act, we find that even in peace time, the restrictions imposed upon the press by the law of contempt and the law of libel, made its freedom more of an ideal to be attained than a reality already attained.

I am not of those who would allow the malicious libeller to go unpunished.

I realize with Bacon that,

"Men's reputations are tender things, and ought to be like Christ's coat, without seam. Who can see worse days than he, that yet living, doth follow the funeral of his reputation."

Nor am I of those who would deny the right of courts to punish actual interference with the administration of the law. (Holt on Libel, c. 9.)

Such right is inherent in courts of commonwealths which adhere to the principle of the supremacy of the law, the principles expressed in the old legal saying, "La ley est la plus haute inheritance, que le roy ad; car par la ley il meme et toutes ses sujesta sont rules, et si la ley ne fuit, nul roi, et nul inheritance sera." (Rex v. Parke (1903) 2 K. B. 432; In Re Shortridge, 99 Cal. 526.)

As said by the Supreme Court of Illinois (People v. Wilson, 64 Ill. 258):

"The loss of public confidence in our in-

tegrity would be a calamity little less than the loss of official integrity itself. The pomp and circumstances which in England aid to clothe the courts and the law with dignity and power are not in consequence with our republican form of government. In this country the power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith, and the moral influence of the courts is gone, and popular respect for law impaired. Law with us is an abstraction. It is personified in the courts as its ministers, but its efficacy depends upon the moral convictions of the people. When confidence in the courts is gone, respect for the law itself it will speedily disappear, and society will become the prey of fraud, violence, and crime.

"The one element in government and society which the American people desire, above all things else, to keep free from the taint of suspicion, is the administration of justice in the courts. So long as this is kept pure, a community may undergo extreme misgovernment and still prosper. But when these tribunals have become corrupt, and public confidence in them is destroyed, the last calamity has come upon a people, and the object of its social organization has failed. The protection of life, liberty and prosperity is the final aim of all government. This is accomplished by an honest administration of just laws. The people, by their representatives, may be relied upon to pass such laws; but unless they are honestly administered, neither life, liberty, nor property enjoys the security which it is the object of government and society to give. If the time shall unhappily ever come when the judiciary of this state has become hopelessly corrupt, and justice is bought and sold, the loss of its moral and material well-being will as certainly follow as the night follows the day."

But I object to some of the fictions which have grown up in these branches of the law and which shackle freedom of discussion.

II

CONSTRUCTIVE CONTEMPT

Contempts are either civil or criminal, actual or constructive.

A civil contempt is the failure to do something ordered to be done by a court in a civil action for the benefit of the opposite party.

A criminal contempt embraces all things done in disrespect of the court or committed against the majesty of the law or the dignity of the court.

The primary object of its punishment is the vindication of public authority. (See Penal Code, Section 166; In Re Wilson, 75 Cal. 580.)

A direct contempt is a contempt committed in the immediate view and presence of the court.

An indirect or constructive contempt is one committed without the presence of the court. (Code of Civil Procedure, Section 1211.)

I do not propose here to enumerate all the instances in which publications have been held to amount to constructive contempt.

Any comment on the conduct of a court or judge in, or on the merits or demerits of a pending case is constructive contempt.

It is contempt to comment on the evidence in a pending criminal prosecution. (Globe Newspaper Co. v. Commonwealth, 188 Mass. 449; 72 N. E. 682.)

It is contempt to criticize the conduct of a judge or a court in a pending case.

It is criminal contempt to publish a false and grossly inaccurate report of the proceedings of any court. (Penal Code, Section 166, sub. 7.)

Three cases will serve to illustrate how the hands of newspapers are tied by the law of contempt.

In a California case, (Ex Parte Barry, 85 Cal. 603), it was held to be contempt as "an unlawful interference with the proceedings of a court" to write concerning a judge that he was guilty of "deliberate lying about the law, deliberate intentional falsification in his official capacity and deliberate intentional denial of justice. He is not merely a fool, but an impudent rascal; a criminal on the bench."

I have no desire to uphold the use of such language, but wish to remark that the court

here punished as contempt what was, at most, a libel on the judge.

In an Illinois case (People v. Wilson, 64 Ill., 195), the following general statement concerning the Supreme Court of that state was held to amount to contempt.

"The courts are now completely in the control of corrupt and mercenary shysters—the jackals of the legal profession—who feast and fatten on the human blood spilled by the hands of other men."

The court said:

> "A court will, of course, endeavor to remain wholly uninfluenced by publications like that under consideration; but will the community believe that it is able to do so? Can it even be certain in regard to itself? Can men always be sure of their mental poise? A timid man might be influenced to yield, while a combative man would be driven in the opposite direction. Whether the actual influence is on one side or the other, so far as it is felt at all, it becomes dangerous to the administration of justice. Even if a court is happily composed of judges of such firm and equal temper that they remain wholly uninfluenced in either direction, nevertheless, a disturbing element has been thrown into the council chamber, which it is the wise policy of the law to exclude.
>
> "Regard it in whatever light we may, we cannot but consider the article in question as calculated to embarrass the administration of justice, whether it has in fact done so or not, and therefore as falling directly within the definition of punishable contempts, announced by this court in the case of Stuart v. People, 3 Scam. 395. It is a contempt, because, in a pending case of the gravest magnitude, it reflects upon the action of the court, impeaches its integrity, and seeks to intimidate it by the threat of popular clamor."

In a Massachusetts case, which went to the Supreme Court of the United States, (Patterson v. Colorado, 205 U. S. 454) a general criticism of the Supreme Court of Colorado was held contemptuous.

Mr. Justice Holmes ruled that the criticism was a contempt, even though it be true, saying that "the subsequent punishment (i. e. punishment of a publication after it is made) may extend as well to *the true* as to the false."

In another Massachusetts case (Globe Newspaper Company v. Commonwealth, 188 Mass. 449, 72 N. E. 682) it was said that a contempt by a newspaper "is not justified by showing that the statements are true, and that the intentional publication was without express intent to injure either of the parties of the case, or to reflect upon the dignity of the court, or to hinder or interfere with the administration of justice."

Had these publications been made the subject of an action for libel—either civil or criminal—truth, public interest, absence of malice would have constituted complete defenses.

But under these decisions, as already pointed out, it is not even necessary to show that the publication *actually* influenced the mind of the judge.

As said by Mr. Chief Justice White (Toledo Newspaper Company v. United States, 247 U. S. 402):

> "Not the influence upon the mind of the particular judge is the criterion, but the *reasonable tendency* of the acts done to influence or bring about the baleful result is the test. In other words, having regard to powers conferred, to the protection of society, to the honest and fair administration of justice and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they have been without influence in a particular case. The wrongdoer may not be heard to try the power of the judge to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

In that case, the prosecution for contempt was instituted six months after the publication of the article criticizing the issuance of an injunction by a federal court enjoining an ordinance establishing a three-cent fare.

This fact led Mr. Justice Holmes to insist, —in a vigorous dissent concurred in by Mr. Justice Brandeis,—that when the Judicial Code (sec. 268) gives Federal Courts the power to punish "misbehavior of any person in their present, or so near thereto as to obstruct the administration of justice," it means to punish acts "so near as to *actually* obstruct."

He said:

> "When it is considered how contrary it is to our practice and ways of thinking for the same person to be accuser and sole judge in a matter which, if he be sensitive, may involve strong personal feeling, I should expect the power to be limited by the necessities of the case 'to insure order and decorum in their presence' as is stated in Ex Parte Robinson, 19 Wall. 505. See Prynne, Plea for the Lords, 309, cited in McIlwain, The High Court of Parliament and its Supremacy, 191. And when the words of the statute are read it seems to me that the limit is too plain to be construed away. To my mind they point and point only to the present protection of the Court from actual interference, and not to postponed retribution for lack of respect for its dignity—not to moving to vindicate its independence after enduring the newspaper's attacks for nearly six months as the court did in this case. Without invoking the rule of strict construction I think that 'so near as to obstruct' means so near as actually to obstruct—and not merely near enough to threaten a possible obstruction. 'So near as to' refers to an accomplished fact, and the word 'misbehavior' strengthens the construction I adopt. *Misbehavior means something more than adverse comment or disrespect.*
>
> "But suppose that an imminent possibility of obstruction is sufficient. Still I think that only immediate and necessary action is contemplated, and that no case for summary proceedings is made out if after the event publications are called to the attention of the judge that might have led to an obstruction although they did not."

A recent case which has attracted nation-wide attention is the case of George R. Dale, editor of the *Muncie (Ind.) Post-Democrat.* (See Nation of August 18, 1926.)

"Dale had been fighting political corruption and the Ku Klux Klan in his weekly, and was finally arrested and indicted. He declared in his newspaper that the prosecution was a frame-up, and was thereupon sentenced to three months in jail and a fine of $500.00 for contempt of court. When he submitted an answer to the court, in which he offered to prove the truth of his charges, he was fined another $500.00 and given three months in jail. The Supreme Court of Indiana reversed the second sentence, but let the first one stand, making this reply to Dale's plea of truth in justification for what he had written:

> "Appellant says in his answer that the statements made in the alleged contemptuous article are true. It is not a justification for contempt—even though it be shown that the article published were true, if it in any way hindered the orderly process of the court and brought it into contempt before the people.
>
> "It is no excuse for one charged with criminal contempt predicated upon an article published in a newspaper that the article, in all respects was true—*The truth of an article is not a matter of defense, neither is it a defense to show that there was no intent to commit contempt.*"

Adverse comments by a newspaper,—no matter how true,—thus become punishable as contempt.

By proceeding against them as contempts, publications which would not be a libel may yet be punishable as contempt.

Not only the defense of truth, but the right of fair comment and criticism of public officials are thus done away with. (Snively v. Record Publishing Company 185 Cal. 565.)

IV

LIMITATIONS UPON THE POWER OF COURTS

Not content with these tremendous powers, courts have endeavored to assume greater powers.

By reason of this contempt, certain limitations have been imposed upon the power to punish for constructive contempt.

Some of these limitations have been imposed by the courts themselves.

Others are of legislative origin.

Trial courts have no power to enjoin, in advance, the publication of things, which upon publication might constitute contempt. (Dailey v. Superior Court, 112 Cal. 94.)

They have no power to order that evidence actually given at trial be not published, and punish as contempt disobedience to such order.

When this was attempted in California (In re Shortridge, 99 Cal. 526) the Supreme Court said:

> "The constitution of every state in the Union guarantees to every citizen the right to freely speak, write, and publish his sentiments on all subjects, and prohibits the passage of any law 'to restrain or abridge the liberty of speech or of the press.' What one may lawfully speak he may lawfully write and publish. The rights thus preserved by the constitution are dear to the heart of every American, and their exercise can be complained of by the courts in a summary proceeding only when the publication or the speech interferes with the proper performance of judicial duty. If there has been no such interference, there has been no contempt."

Criticism of a judge for past decisions is not contempt.

"When a case is finished, courts are subject to the same criticism as other people." (Patterson v. Colorado, 205 U. S. 454; Metcalf v. District Court, 52 Mont. 46.)

The chief legislative limitation in California is contained in subdivision 13 of section 1209 of the Code of Civil Procedure, which declares:

> "But no speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings."

This limitation does not apply to contempts committed by officers of the court,—such as attorneys.

Of its purport, the Supreme Court of California (Matter of Shay, 160 Cal. 399) said:

> "It was not intended to affect the power of the court to deal with its own officers for acts of disrespect in connection with their official positions. Its purpose obviously was to prevent the punishment of ordinary citizens, not connected with the court nor owing to it any special duty of fidelity and respect, for any 'speech or publication,' in censure or abuse of the court or the justices thereof, made to other persons, or to the general public, or even to the justices themselves, in the exercise of the common privilege of free speech."

Grave doubts have been cast upon its constitutionality.

It has been suggested that it is an unconstitutional limitation upon the inherent power of the court to punish contempts. (Carter v. Commonwealth, 96 Va. 791, 45 L. R. A. 310; Hale v. State, 55 Ohio St. 210, 45 N. E. 199; Note 36 L. R. A. 254; Truax v. Corrigan, 257 U. S. 312; 66 Law Ed. 254.)

The social advantages of such a provision should outweigh the dictates of a narrow constitutionalism. (See Ex Parte Hickey, 4 Smedes & M. 751; Storey v. People, 79 Ill., 50; Sandefur v. Canoe Creek Coal Company, 266 U. S. 42, 69 Law Ed. 162.)

The exemplary power to punish for contempt should, in the case of newspapers, be limited to actual interference with the administration of justice.

Long distance criticism should not be considered such interference.

It is regrettable that a man of the clear thinking of Justice Holmes should have sanctioned the doctrine that truth is no defense to a proceeding for constructive contempt by one who is not an officer of the court.

And I doubt if the man who has since expressed the views he did in the *Schenck* (Schenck v. U. S., 249 U. S. 47) and *Abrams* (Abrams v. U. S., 250 U. S. 616) cases, would now adhere to this view.

The "previous restraint" theory of free-

dom of the press in the *Patterson* case is disavowed in the *Schenck* case.

Just as in the law of civil libel truth, and in the law of criminal libel, truth and justifiable motive (by reason of public interest), are complete defenses, so a truthful publication should *never* constitute contempt.

We no longer penalize truth in the law of libel.

We should *not* penalize it in the law of contempt.

In the words of Mr. Justice Brewer (Patterson v. Colorado, 205 U. S. 454):

> "The public welfare cannot override constitutional privileges and if the rights of free speech and free press are, in their essence, attributes of national citizenship, as I think they are, then neither congress nor any state can, by legislative enactments or by judicial action, impair or abridge them."

As said by the Supreme Court of Montana:

> "It cannot be that liberty of the press means only the right to publish laudatory matter concerning a court or judge, but that as to their shortcomings or demerits there must be profound silence. In the language of a distinguished jurist: 'No such divinity doth hedge about a judge.'" (Metcalf v. District Court, 52 Mont. 46, 54; 155 Pac. 278.)

Our own Supreme Court has said (In re Shortridge 99 Cal. 526):

> "In this country it is a first principle that the people have the right to know what is done in their courts. The old theory of government which invested royalty with an assumed perfection, precluding the possibility of wrong and denying the right to discuss its conduct of public affairs, is opposed to the genius of our institutions in which the sovereign will of the people is the paramount idea; and the greatest publicity to the acts of those holding positions of public trust, and the greatest freedom in the discussion of the proceedings of public tribunals that is consistent with truth and decency are regarded

(Continued on Page 28)

Liabilities and Obligations of Sellers of Personal Property

By ROBERT P. JENNINGS *of the Los Angeles Bar*

(Continued from issue of March 17, 1927)

In some respects, one of the most important of all of the implied warranties attaching to a sale is that contained in Section 1775 of the Civil Code, which reads as follows:

> "One who makes a business of selling provisions for domestic use, warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome."

We say it is one of the most important because it touches every family and almost every individual daily, and also because the cases arising out of its alleged breach are usually for damages in large sums for either personal injuries or death claimed to have been caused by unwholesome food.

It is to be noted that before this warranty attaches, the sale must be by a person who makes a business of selling, the sale must be for domestic use, and it must be to some person who buys for actual consumption. In other words, it applies only to dealers who sell provisions directly to the public for actual consumption. It does not apply to a manufacturer who sells to wholesalers, for his liabilities would be governed by other implied warranties which we have already discussed. It does not apply to the wholesaler, because he does not sell to those who buy for actual consumption. He only sells to dealers. There does not seem to be any good reason why the warranty should not be implied in a sale by a wholesaler, for the reason for the rule is stated to be that one selling articles may readily be presumed to know whether they are unwholesome, and unsound, or not; and it is difficult to understand why a wholesaler should not be presumed to know, just as well as a retail dealer, whether his provisions are sound and wholesome. But, of course, we are not concerned with what the law might be, but with what it actually is. Furthermore, it has been held in this State, in the case of *Loucks v. Morley*, 39 Cal. App. 570, that this warranty does not attach to a sale of a meal by a restaurant keeper. The distinction drawn is that a restaurant keeper does not sell food for domestic consumption, nor, as a matter of fact, does he really sell the food at all. He renders a service. The matter is thus stated by the Appellate Court, at page 574:

> "The reasons given by these courts for holding that the transaction is not a sale, but the rendition of service, are summed up in the language of Professor Beal, as follows: 'As an innkeeper does not lease his rooms, so he does not sell the food he supplies to his guest. It is his duty to supply such food as the guest needs, and the corresponding right of the guest is to consume the food he needs and to take no more. Having finished his meal, he has no right to take food from the table, even the uneaten portion of the food supplied to him; nor can he claim a certain portion of the food as his own to be handed over to another in case he chooses not to consume it himself. The title to food never passes, as a result of an ordinary transaction of supplying food to a guest; or, as it was quaintly put in one old case: 'he does not sell but utters his provisions.'"

Further on in the decision, the court, discussing the question as to whether or not the code warranty is applicable to a restaurant keeper, says:

> "This brings us to the real question in the case: What is the scope and meaning of section 1775? As we have shown, it was held in the Merrill and Valeri cases (88 Conn. 314, (Ann. Cas. 1916D, 917 L. R. A. 1915B, 481, 91 Atl. 533), and

218 Fed. 519) that where a customer is furnished food in a restaurant for immediate consumption, the transaction is not a sale but a rendition of service, and that, for this reason, there can be no implied warranty. Aside from this, there is, in our opinion, a stronger ground for holding that no implied warranty, on the part of a restaurant-keeper arises under code section 1775. The implied warranty that arises under that section is confined to those who make a business of selling provisions 'for domestic use.' 'Domestic' means 'belonging to the house or household; concerning or relating to the home or family.' (Standard Dictionary.) The word itself, in its derivation from 'domus,' a house, suggests its inherent purport. Thus it has been held that servants employed in a hotel are not 'domestic' servants. *(Cook v. Dodge*, 6 La. Ann. 275.) The 'domestic' use of water means the use to which water is applied by the family, or for family use, and includes all use to which water is applied around the home, including the watering of animals there; but it does not include the temporary quenching of the thirst of men or animals at drinking places, maintained by the city in public places. *(Water Supply Co. v. Albuquerque*, 17 N. M. 326, (43 L. R. A. (N. S.), 439, 128 Pac. 77).) It is the place where the food is eaten or drunk, rather than the fact that it is food or drink, that determines whether its use is a 'domestic' use or not. For these reasons we are of the opinion that defendant was not 'one who makes a business of selling provisions for domestic use,' and that, therefore, section 1775 of the Civil Code is not applicable. * * *

"We are satisfied, therefore, that the overwhelming weight of authority, both in England and America, supports our present conclusion, viz., that in such cases as are supported by the facts under consideration here, that 'there is no implied warranty of the quality of food furnished by a restaurant-keeper to a customer for immediate consumption, since the transaction does not constitute a sale but a rendition of service.'"

An interesting inquiry revolves around the question as to whether or not this warranty applies to canned food. It will be noted that the section of the code containing a warranty does not refer to groceries or to food, but to provisions. Does the word "provisions" include canned goods? The reason for the rule, that is, that a grocer has the best opportunity to know and learn by examination of the things he sells, whether they are sound and wholesome or not, of course, fails to apply so far as canned goods are concerned. The only way he can determine whether or not his canned goods are sound and wholesome is to open the cans and destroy them for the purpose for which they were intended —that is, the purpose of sale for food. The matter has not been decided in this State. But it has been decided in various other States of the Union where the common law warranty, of which our code is simply a declaration, is in force. In some States the rule has been applied to canned goods, but in other States, backed up by excellent reasoning, the rule has been held not to apply to canned goods. It has been so held in Maine and in New York, Utah, New Jersey and Washington. The reasoning of these courts is illustrated by the holding of the New York Court in the case of *Julian v. Laubenberger*, 38 N. Y. Supp. 1052, 5 A. L. R. 249, where it is said:

"The defendant sells a can of food. It is well known, and must be known to both parties, that he has not prepared it, that he has not inspected it, and that he is entirely ignorant of the contents of the can, except so far as he had purchased from reputable dealers in the market. It seems to me that it would be unreasonable to say that, at the time of the purchase here, the vendee relied upon the superior knowledge of the vendor; but it must be assumed that both parties knew, and must have necessarily known, that the vendor was entirely ignorant of, and without means of ascertaining, the condition of the article sold, and that the means of inspection were as much open to the purchaser as the vendor. Under such circumstances, if the purchaser desires to protect himself, he must have recourse to an express warranty. The law cannot be so unreasonable as to inject into a contract what neither party had, or could have had, in mind at the time the contract was made."

Certainly, this court makes out a pretty

good case against the application of the warranty to canned goods. So far as our statute is concerned, it is to be noted that it was passed in 1872, about fifty-five years ago, at a time when canned goods played a very small part in a grocer's sales as compared to today. It might be interesting, in this connection, to quote further along the same line from the language of the Supreme Court of Maine in the case of *Bigelow v. Main Central Railroad Company*, 110 Me. 105, 43 L. R. A., New Series, 627. This court calls attention to the fact that the art of canning is comparatively a new art, saying, at page 628:

"Of little less importance than the appearance of the great achievements referred to is the establishment and development of the canning industry in this country and in other parts of the world. It may be said that the art of canning, if not invented within the last century, has, at least assumed the vast proportions which it has now attained, within a comparatively few years. It involves a unique and peculiar method of distributing, for domestic and foreign use, almost every product known to the art of husbandry. The wholesaler, the retailer, and the user of these goods, whether in the capacity of caterer, seller, or host, sustain an entirely different duty, respecting a knowledge of their contents and quality, than prevails with regard to knowing the quality of those food products, which are open to the inspection of the seller or victualer. With reference to these it may well be considered, as has been held, that having an opportunity to investigate, and thereby to know the quality of their merchandise, they are charged with a responsibility amounting to a practical guaranty.

"The early rules of law were formulated upon the theory that the provision dealer and the victualer, having an opportunity to observe and inspect the appearance and quality of the food products they offered to the public, were accordingly charged with knowledge of their imperfections. *Winsor v. Lombard*, 18 Pick. 57; *Bishop v. Weber*, 139, Mass. 411, 52 Am. Rep. 715, 1 M. E. 154. But, upon the state of facts in the case at bar, a situation arises that cannot, in the practical conduct of the can-

ning business, fall within these rules. No knowledge of the original or present contents of a perfect appearing can is possible in the practical use of canned products. They cannot be chemically analyzed every time they are used. Accordingly, the reason for the rule having ceased, a new rule should be applied to the sale and use of canned goods that will more nearly harmonize with what is rational and just.

"The statement of facts before us shows that the asparagus served to the plaintiff was of a very high brand, sold by a most reliable firm, guaranteed under the pure food law, and without fault or blemish discoverable to the eye, to the smell, or taste. It was apparently a perfect can of what it purported to contain. The plaintiff in February must have known it was a canned product when she ordered it. *Winsor v. Lombard*, 18 Pick. 57. Upon her order she was entitled to a reputable brand, packed and inspected in accordance with approved methods, and the law implied a warranty on the part of the defendant to furnish it. This obligation was fully met. But what was the legal relation sustained by the plaintiff and defendant with respect to their knowledge, and means of knowledge, of this can of asparagus? It seems to us they were absolutely mutual. To make this relation clear, suppose, by way of illustration, this identical can of asparagus had been shown by the defendant to the plaintiff. Then what are the necessary inferences? The defendant knew it was a can of asparagus. The plaintiff knew it was a can of asparagus. The defendant knew it was the Red Label Brand. The plaintiff knew it was the Red Label Brand. The defendant knew it was put up by the S. S. Pierce Company. The plaintiff knew it was put up by the S. S. Pierce Company. The defendant knew it was guaranteed by the pure food act. The plaintiff knew it was guaranteed by the pure food act. The defendant could discover no imperfection about the can. The plaintiff could discover none. The defendant observed no fault with the contents. The plaintiff found none. It therefore appears that it was utterly impossible for the defendant to know anything more about the contents of this can of asparagus than did the plaintiff. With regard to this knowledge, or means of obtaining it, they were upon a perfectly equal footing. The plaintiff and the defendant necessarily understood the situation precisely alike. There could be no mistake. The plaintiff knew, or should be charged with knowledge, that the defendant could have no possible information concerning the contents of that can which she did not have. We know of no rule of law which will imply a warranty of that of which it is impossible for a defendant to know by the exercise of any skill, knowledge, or investigation, however great. In other words, neither law nor reason require impossibilities."

The same opinion seems to draw a distinction between provisions as something sold in bulk, open to inspection, and canned or packed food products sold in the original packages, the court saying:

> "But in this same case the rule which we invoke seems to be sustained by analogy of reasoning, and the distinction made between a sale of provisions, which are open to inspection, and a sale of food products which are packed under inspection, and calculated to be offered in the market for sale in the inspected packages."

Another warranty is that which arises on the sale of the good will of a business, and is covered by Section 1776 of the Civil Code, as follows:

> "One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers."

This warranty has been several times recognized by the Supreme Court, and it has been held that where the seller of good will has endeavored, thereafter, to draw off the customers of the purchaser, the purchaser is entitled to an off-set of the amount of his damages against the purchase money which the seller is seeking to recover. *(Snow v. Holmes*, 71 Cal. 142, 149.)

As to the warranty upon a judicial sale, the code has this to say, in Section 1777:

> "Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property."

It has been said by our Supreme Court that this section declares the common law

rule that the doctrine of *caveat emptor* is applicable to judicial sales. It has also been held that an executor's sale, under a power in a will, is not a judicial sale, and the purchaser, at such sale, deals with the executor as he would with any other vendor. *(Estate of Pearson*, 98 Cal. 603, 612.)

There is still one other code warranty covering the exchange of money. It is provided by Section 1807 of the Civil Code that:

> "On an exchange of money, each party thereby warrants the genuineness of the money given by him."

There seem to be no decisions under this section; and doubtless there seldom would be any occasion for a controversy. If money were not genuine, it would scarcely be money, and one would hardly claim that he had incurred no liability by changing good money for other which was not genuine.

There is one other matter which should be noted before closing, and that is the implied liability resting upon the seller of a dangerous article. This rule does not rest in warranty, but the liability is in the nature of a tort, although implied from the transaction, and is thus stated by the Supreme Court in the case of *Lewis v. Terry*, 111 Cal. 39, at page 44:

> "It is well settled that a man who delivers an article, which he knows to be dangerous or noxious, to another person, without notice of its nature and qualities, is liable for any injury which may be reasonably contemplated as likely to result, and which does in fact result therefrom, to that person or any other who is not himself in fault."

In that case, the seller had sold a folding bed, which, to his knowledge, was defective and would sometimes close up when used for the purpose for which it was intended. As a result, the plaintiff, on attempting to place the bed in position for use, was seriously injured by the heavy frame work of the bed falling forward upon her, breaking her arm and otherwise injuring her. The defendant said nothing to the purchaser regarding this defective construction of the bed. The Supreme Court says, further, at page 45:

> "The fact insisted upon by respondent that a bed is not ordinarily a dangerous instrumentality is of no moment in this case; if mere nonfeasance or perhaps misfeasance were the extent of the wrong charged against defendants that consideration would be important *(Thomas v. Winchester*, 6 N. Y. 397; 57 Am. Dec. 455); but the fact that such articles are in general not dangerous would seem to enhance the wrong of representing one to be safe for use when known to be really unsafe, for the danger is thus rendered more insiduous."

It will be noted that in such a case, the liability extends not only to the immediate purchaser, but to any person who is injured, thus differing from the usual rule that liability extends only to those who are in privity of contract. The rule is thus stated in a Washington case, *Weiser v. Holsman*, 33 Wash. 87, 99 American State Reports:

> "One who sells and delivers to another an article intrinsically dangerous to human life or health, such as a poison, an explosive, or the like, knowing it to be such, without notice to the purchaser that it is intrinsically dangerous, is responsible to any person who is, without fault on his part, injured thereby. The rule does not rest upon any principle of contract, or contractural relation existing between the person delivering the article and the person injured, for there is no contract or contractural relation between them. It rests on the principle that the original act of delivering the article is wrongful, and that everyone is responsible for the natural consequences of his wrongful acts. The rule that liability exists in such cases is abundantly supported by authority."

After the last meeting and dinner of the Bar Association on March 24 at the Hotel Alexandria, a silver cigarette case was found which had been left on one of the tables. The owner of this case may recover the same by calling for it at the office of the Bar Association, 687 I. W. Hellman Building.

Book Reviews

By HARRY GRAHAM BALTER *of the Los Angeles Bar*

LEGAL PSYCHOLOGY; M. Ralph Brown; 1926; 346 pages; Bobbs-Merrill Co., Indianapolis, Publishers.

It is only in recent years that more than a few lawyers even sensed the important part that a knowledge of psychology played in the every-day affairs of the lawyer. Of course, the intelligent attorney had always realized that an understanding of "human nature" was quite desirable and essential. But this study was always more a matter of accident or a hobby than a scientific, purposeful mastery of a problem in each particular case. With the advent of Munsterberg's "On the Witness Stand," in 1909, a more general interest in the whole subject was generated. Since that time there has developed an increasing conviction among lawyers that to be well-equipped in his profession the lawyer must keep abreast of the times and understand at least, the salient features of the scientific method of analyzing the actions, reactions, impulses, stimuli, and mental and physical proclivities of men, women and children, with whom the lawyer must come in daily contact.

The last few years has brought forth a veritable flood of literature upon the subject of psychology, and particularly its relation to law and crime, to the conduct of law suits, to the admission and exclusion of different types of evidence, and to almost every phase of the field of the lawyer's activity.

Brown's *Legal Psychology* is a later contribution to this field. It is not an original contribution; nor is it the work of a scholar in the field of psychology. It is apparently written by a lawyer who has made an especial study of psychology as it relates to the lawyer's work. It is for this very reason that this book is recommended to the bench and bar. To the lawyer already well versed in the principles of psychology the work on *Legal Psychology* will tell him very little that he does not now know. But to the vast majority of lawyers who know little or nothing at all about this subject, or who fail to even realize the utility of a knowledge of these principles, this work will prove to be both interesting and beneficial.

The book is well written and not in too scientific a language. Yet, highly scientific concepts are discussed with such a facility of expression that it is interesting even to the lawyer who is for the first time acquainting himself with such concepts. The author has gleamed his material from numerous well recognized authorities, and his ready references to these sources whet the appetite of the reader for more.

A general summary of the contents of the volume will give the reader an idea of its scope. The Introduction discusses Psychology, Law, and Ethics; Part I treats of Trial Psychology, and discusses The Appeal, Presenting the Appeal, The Judge and Jury, Evidence, and The Child and the Woman; Part II discusses Criminal Psychology; Part III discusses Personal Psychology, and treats of (a) Some Important Mental States and Processes; namely, Habit, Memory, Will, Imagination, Reason, Attention, Personality, Confidence and Fatigue; (b) The Psychology of Words. Appendix A tells of the famous Berkeley Lie Detector and other Deceptive Tests, and Appendix B treats of Mechanical Aids for Memory.

We shall close this review with an interesting excerpt from the author's discussion of the relation of the use of psychology in the conduct of a law suit and the canons of professional ethics.

"At some place in this volume there may arise in your mind the question as to whether the full use of the principles of psychology in the conduct of a law suit may not lead one into violation of the code of professional

ethics. For instance, is it ethical consciously to convey impressions to a jury by means of suggestion rather than by argument with facts? It is frequently done without being aware of it, but is it ethical to do it consciously? To take another example, is it ethical to appeal to the emotions of the jury rather than merely to their reason? It has been done time and again by the leaders of the bar. Is it ethical to do it consciously and intentionally?

"These questions, like the others which will arise cannot be answered by a direct "yes" or "no." * * * The answer would seem to be very similar to the reply which might be made to the question as to whether fire was a beneficial force. * * * It is all a matter of where the fire is and what it is doing. If it is burning your house it is harmful, while if it is cooking your dinner, it is beneficial. Thus, fire may perform either a destructive or a constructive task.

"So it is with psychology in the courtroom. It may either hinder or assist the wheels of justice depending upon the manner and extent of its use. *** If the use of psychology is made to win a case which has no foundation in fact or law, then the use is unprofessional. I claim further that if a just case is lost through the lack of the use of psychological principles then the lawyer losing the case is just as unprofessional in his conduct as if he had been actually corrupt. * * *

"A knowledge of psychology is necessary today not only to know how to present a just case so that it will have the greatest opportunity to succeed, but to know when the opposition is making unfair use of psychology, and to know how to meet it and prevent it. This is a vital need today." (page 9 et seq.)

ANNOTATED CANONS OF ETHICS, American Bar Association, compiled by the Chairman for the use of the Special Committee on Supplements to Canons of Professional Ethics; January, 1926; I-VII and 280 pages; The Lord Baltimore Press, Baltimore, Md.

These canons represent the unofficial work of Charles A. Boston, Chairman of the Special Committee of the American Bar Association for Supplementing its Canons of Professional Ethics. The committee had not at the time of the publication of this little book acted upon these suggested canons, and so holds itself in no way responsible for them.

Although the codes of professional ethics of different bar associations may vary in their detail, they must all necessarily adhere to the same underlying principles behind any code of professional ethics for lawyers; namely, that law is a profession, not a trade; that the relationship between the lawyer and the client is one of trust and confidence, and not simply that of a craftsman and his employer; that the law is a time-honored profession, and always has been closely interwoven with community affairs; that whatever the lawyer does is quickly reflected in the community's respect *vel non* for the profession.

When every lawyer fully realizes these principles, codes of professional ethics will hardly be necessary. But until the attorney is thoroughly trained to respect himself and his profession, and to have a healthy regard for the community's attitude towards himself and the profession, the profession for its own advancement and protection is justified in laying down rules of conduct for its members and in disciplining them for the infraction of these rules.

The little book contains a wealth of interesting material.

Part I is Explanatory, under which heading are discussed various general subjects such as "What Makes a Profession," "The Practice of Law," and the like. Part II contains the Canons of Professional Ethics approved by the American Bar Association under which are discussed by question and answer 32 different phases of a lawyer's relation to his client, to the courts, and to his profession. Part III contains some Local Rules and Canons of Ethics, under which are given the Codes of Ethics of various local bar organizations, including that of the Bar Association of San Francisco. Part IV contains a List of Subjects upon which the Chair-

man of the Committee on Professional Ethics of the New York Lawyers' Association has been consulted without submission for the opinion of the committee. Part V contains Extracts from Decisions of the General Council of the Bar of England. Part VI contains Extracts from the "Law, Practice and Usage of the Solicitors Profession" of England. Part VII contains a Bibliography with Index to Canons and Index to Topics.

The hope of every high-minded lawyer is that some day the stigma of the following little medieval verse will no longer be true:

TO SAINT IVOR

"Sanctus Ivo erat Brito
Advocatus sed non latro
Res miranda populo."
Saint Ivo was a Brittainy lawyer
But not a robber—
A wonder to the people!

ETHICS

(Continued from Page 7)

not only needed definite rules to guide him in every step of his practice, but required the force of several minds to convince him of the meaning and intent thereof. No one would advocate that the study or practice of ethics should be carried to the point where it makes the lawyer introspective or timid, but it is well for one to build up a healthy, general attitude towards the subject which will insure a general compliance with the spirit, if not the letter, of the Canons of Ethics. It is not as desirable that one should abide strictly by the letter of the Canons as that he have and evidence an inner consciousness and desire to do what is fair, just and decent.

Until the millennium men will strive for better conduct and the finer things of life, but the average will improve slowly. The cross currents of life will as always slowly winnow out the weak and the ignorant, the selfish and the greedy, and all we can do as the profession gradually moves forward and upward is to try and act individually in accordance with the ideals of the practice, to lend a hand to the weak, to help prevent wrong conduct, and aid in punishing those who wilfully violate their duty and destroy the confidence of the public in our profession. Until we ourselves demonstrate that we are prepared to sacrifice our personal interests to the upholding of the great principles of conduct which is our oath and in our Canons of Ethics we profess, we cannot expect to enjoy the unquestioned confidence and respect of the public we serve.

FEDERAL REGULATION OF FLYING

(Continued from Page 8)

the lives of passengers and the value of goods moving in common carrier craft on scheduled routes.

Rules of the road are cared for in chapter five. It is not contemplated that all air traffic shall be regulated; merely that flying on established civil airways shall come within the purview of the regulations. These civil airways embrace air highways to be used in interstate commerce and are designated by the Secretary of Commerce. One of the several established to date terminates at Los Angeles. It is used by Western Air Express, Inc., in its air mail operations between this city and Salt Lake. Acrobatic and other stunt flying is definitely relegated to certain restricted areas over which general government has control.

The regulations were declared effective at midnight, December 31, 1926. However, if an aircraft operator will have made application to the Department of Commerce for license prior to March 1, 1927, without action having been taken upon the application, the operator may continue unregistered either as to his craft or men, until July 1, 1927.

Mr. William P. MacCracken, Jr., of Chicago, is Assistant Secretary of Commerce in charge of aviation. He is a lawyer of considerable reputation, having specialized in the practice of air law. Prior to his appointment in Washington he was Secretary of the American Bar Association. It is under Mr. MacCracken's administration that the new regulations have been prepared and promulgated, and it is to his attention that all lawyers should direct the difficulties of their air-clients.

THE NEWSPAPER AND THE LAW OF CONTEMPT

(Continued from Page 16)

as essential to the public welfare. Therefore, when it claimed that this right has in any manner been abridged, such claim must find its support, if any there be, in some limitation expressly imposed by the law-making power, or the right to exercise the authority claimed must be necessarily implied as essential to the execution of the powers expressly conferred."

Important as it is to safeguard the dignity of courts, "handsome is that handsome does."

Not even courts have a right to *false reputations.*

Courts should be protected from the shafts and arrows of falsehoods.

But it is neither good ethics, nor good policy to throw around courts a mantle to cover ugliness and sordidness and to make punishable as contempt any attempt, however well-meaning, however grounded on truth, to uncover it. (See McClatchy v. Superior Court, 119 Cal. 413.)

Tolstoy tells the story of the tailor who made a garment for the Czar which was supposed to be visible to those only who were upright and honest.

The garment was, in fact, non-existent, but neither the Czar nor his courtiers would acknowledge the fact.

To do so would have branded them as dishonest and corrupt.

So when the Czar rode down in state through the streets of St. Petersburg, *presumably* dressed in this wonderful garment, but *actually* naked, no one dared acknowledge his nakedness.

But a moujik who had not heard the story of the fictitious garment and its marvellous qualities, with the pragmatic instinct of the European peasant tore the entire mesh of fictions by shouting, "Look! the Czar is naked."

In dealing with the problem of contempt, I stand for the right of the moujik to say that the Czar is naked, *when he is naked.*

Thanks to Sun Realty Company

When the Trustees of the Association decided to make an energetic campaign in behalf of the candidates endorsed by the Association for Municipal Court Judgeships, it became necessary to secure offices to serve as campaign headquarters. Through the efforts of Trustee Leonard B. Slosson, the Sun Realty Company has extended to the Association for such headquarters the use of offices, Suite 633, in the Consolidated Realty Building, for the necessary period of time, free of charge.

This is, indeed, a very excellent courtesy on the part of the Sun Realty Company, and we take this opportunity to acknowledge our appreciation. It is also worthy of note that for several months the Sun Realty Company has been one of the most substantial advertisers in the *Bulletin.* It is this type of splendid cooperation that enables the Los Angeles Bar Association and the *Bulletin* to progress in their constructive endeavor.

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

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